

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

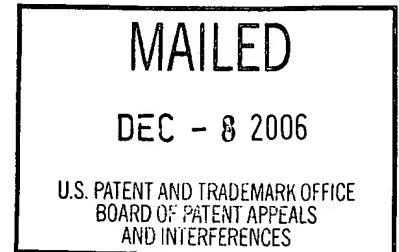
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GARY ROSS RICARD

Appeal No. 2007-0095
Application No. 09/843,566

ON BRIEF



Before THOMAS, KRASS, and SAADAT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

Decision on Appeal

This is a decision on appeal from the final rejection of claims 1-44.

The invention is directed to a browser operating in two different modes. One mode, a "thumbnail" mode, is presented in addition to a normal window, or as a small window on the screen in the case of a small screen device. The page image presented by the browser is logically divided into segments through use of the thumbnail. The thumbnail image is divided into cells, one cell for each page image segment. Together, the cells form a grid. When a user selects a cell on the thumbnail, the browser presents the associated segment of the page image to the user via the user's window or screen.

Representative independent claim 1 is reproduced as follows:

1. An apparatus, said apparatus comprising:

a processor; and

memory, said memory being connected to said processor; and

a browser stored in said memory, said browser presenting a first window and a second window to a user, said first window being divided into a plurality of cells, each of said cells being associated with different segments of an image, said second window being used to display one of said different segments to said user.

The examiner relies on the following references:

Anderson et al. (Anderson)	6,097,431	Aug. 01, 2000
Angiulo et al. (Angiulo)	6,275,829	Aug. 14, 2001
		(filed Nov. 25, 1997)

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Claims 1-44 stand rejected under 35 U.S.C. § 103 as unpatentable over Anderson in view of Angiulo.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). The examiner must articulate reasons for the examiner's decision. In re Lee, 277 F.3d 1338, 1342, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). In particular, the examiner must show that there is a teaching, motivation, or suggestion of a motivation to combine references relied on as evidence of obviousness. Id. at 1343, 61 USPQ2d at 1433-34. The examiner cannot simply reach conclusions based on the examiner's own understanding or experience - or on his or her assessment of what would be basic knowledge or common sense. Rather, the examiner must point to some concrete evidence in the record in support of these findings. In re Zurko, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Thus the examiner must not only assure that

the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the examiner's conclusion. However, a suggestion, teaching, or motivation to combine the relevant prior art teachings does not have to be found explicitly in the prior art, as the teaching, motivation, or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references. The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art. In re Kahn, 441 F.3d 977, 987-88, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) citing In re Kotzab, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1316-17 (Fed. Cir. 2000). See also In re Thrift, 298 F.3d 1357, 1363, 63 USPQ2d 2002, 2008 (Fed. Cir. 2002). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the

evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1040, 228 USPQ 685, 687 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 146-147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii) (2004)].

With respect to independent claims 1, 17, and 31, it is the examiner's position that Anderson discloses a processor and memory connected thereto (referring to column 5, lines 7-26), a first screen (referring to Figure 11) being divided into a plurality of cells with each cell being associated with a different segment of an image (referring to column 6, lines 25-40), and a second screen used to display one of the different segments to the user (referring to Figure 9 and column 6, lines 25-40 and 52-65). The examiner acknowledges that Anderson does not disclose a first and second window. The examiner turns to Angiulo, specifically Figures 2 and 6-8, and to "lines 10-25" of some unidentified column (see page 3 of the answer), and

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concludes that it would have been obvious "to combine the first and second windows of Angiulo with Anderson's screens" in order to "help the user easily browse these images" (answer-page 3).

Appellant argues only that Anderson pertains to viewing and handling multiple images while the instant invention pertains to segmenting a single image (brief-page 7). Appellant has no quarrel with the propriety of combining the references and appellant does not argue that Angiulo does not disclose what the examiner alleges it to disclose. Thus, the *sole* argument, directed at all of the claims, is that Anderson does not view and handle a *single* image.

We have carefully reviewed the evidence before us and we conclude from such a review that the examiner has established a *prima facie* case of obviousness with regard to the instant claimed subject matter that has not been successfully rebutted by appellant.

Taking instant claim 1 as exemplary, we agree with the examiner that the various images within group types 90" in Figure 11 of Anderson may be reasonably interpreted as cells making up an entire single image comprising the 9 different images therein.

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A user viewing this composite sees one large image comprising 9 smaller images. Thus, Figure 11 of Anderson does, indeed, show a window "divided into a plurality of cells, each of said cells being associated with different segments of an image," as claimed.

Appellant's citation of various portions of Anderson reciting a plurality of "images" is not persuasive of an error in interpreting Figure 11 of Anderson as being a single image comprised of 9 segments. Neither are we convinced by appellant's attempt to distinguish the instant claimed invention over Anderson by citing the claim language calling for an association between a window cell and a segment of an image (brief-page 9). Clearly, the "image" in Anderson is the image shown in Figure 11, wherein that single image comprises 9 different segments each segment being shown in each of the cells K08-K16. There is an association between a window cell (e.g., the airplane shown in cell K08) and a segment (that segment depicting the airplane part of the overall image) of the image.

Since appellant has not convinced us of any error in the examiner's reasoning, we will sustain the rejection of claims 1-44 under 35 U.S.C. § 103.

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The examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

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AFFIRMED

JAMES D. THOMAS
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

BOARD OF PATENT

APPEALS AND

INTERFERENCES

MAHSID D. SAADAT
Administrative Patent Judge

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